

LIBRARY
SUPREME COURT, U.S.

Office - Supreme Court, U. S.

FILED

DEC 30 1954

HAROLD B. WILLEY, Clerk

No. 208

In the Supreme Court of the United States

OCTOBER TERM, 1954

FRANK LEWIS, PETITIONER

v.

UNITED STATES OF AMERICA

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT**

BRIEF FOR THE UNITED STATES

SIMON E. SCHLOFF,

Solicitor General

WARREN OLNEY III,

Assistant Attorney General

HARVIN E. FRANKEL,

Special Assistant to the

Attorney General

KEATRINE ROSENBERG,

JOSEPH A. BARRY,

Attorneys

Department of Justice, Washington 25, D. C.

INDEX

| | Page |
|--|------|
| Opinions below | 1 |
| Jurisdiction | 1 |
| Questions presented | 2 |
| Constitutional provisions, statutes, and regulations involved | 2 |
| Statement | 3 |
| Summary of argument | 4 |
| Argument | 8 |
| I. A nation-wide revenue measure may con- stitutionally reach activities illegal under federal law | 8 |
| II. The privilege against self-incrimination does not justify the failure to pay the tax | 13 |
| A. Before any tax was due, the statute informed petitioner that if he con- tinued in the wagering business, he would be subject to taxation and regulation | 13 |
| B. The \$50 occupational tax is prospec- tive in operation | 20 |
| III. The posting and listing provisions of the Wagering Tax Act do not constitute an unlawful search and seizure prohibited by the Fourth Amendment | 23 |
| Conclusion | 28 |
| Appendix | 29 |

CITATIONS

Cases:

| | |
|--|-----------|
| <i>Atlantic Cleaners and Dyers v. United States</i> , 286 U. S. 427 | 12 |
| <i>Boyd v. United States</i> , 116 U. S. 616 | 25, 26 |
| <i>Coates v. United States</i> , 186 F. 2d 338 | 18 |
| <i>Davis v. United States</i> , 328 U. S. 582 | 8, 26, 27 |
| <i>Dear Check Quong v. United States</i> , 160 F. 2d 251 .. | 18 |
| <i>E. Fougere & Co., Inc. v. City of New York</i> , 224 N. Y. 269 | 14 |

Cases—Continued

| | Page |
|--|-------------------------------------|
| <i>Irvine v. California</i> , 347 U. S. 128..... | 28 |
| <i>Johnson v. United States</i> , 318 U. S. 189..... | 20 |
| <i>Nigro v. United States</i> , 276 U. S. 332..... | 11 |
| <i>Rescue Army v. Municipal Court</i> , 331 U. S. 549.. | 24 |
| <i>Rutkin v. United States</i> , 343 U. S. 130..... | 17, 20 |
| <i>Shapiro v. United States</i> , 335 U. S. 1..... | 8, 15, 26, 27 |
| <i>Sonzinsky v. United States</i> , 300 U. S. 506..... | 11 |
| <i>United States v. Doremus</i> , 249 U. S. 86..... | 11 |
| <i>United States v. Harriss</i> , 347 U. S. 612..... | 22 |
| <i>United States v. Kahriger</i> , 345 U. S. 22..... | 4, |
| | 6, 7, 8, 13, 14, 15, 23, 24, 25, 27 |
| <i>United States v. One Ford Coupe</i> , 272 U. S. 321.. | 9, 13, 20 |
| <i>United States v. Sanchez</i> , 340 U. S. 42..... | 11 |
| <i>United States v. Stafoff</i> , 260 U. S. 477..... | 5, 10, 13, 20 |
| <i>United States v. Sullivan</i> , 274 U. S. 259..... | 13, 20 |
| <i>United States v. Yuginovich</i> , 256 U. S. 450..... | 10, 20 |
| <i>Wilson v. United States</i> , 221 U. S. 361..... | 7, 26, 27 |
| Constitution, Regulations, Statutes: | |
| Constitution: | |
| Fourth Amendment..... | 23, 26, 29 |
| Fifth Amendment..... | 6, 22 |
| Treasury Regulations 132: | |
| Sec. 325.20..... | 41 |
| 325.21..... | 41 |
| 325.24..... | 42 |
| 325.25..... | 21, 43 |
| 325.30..... | 43 |
| 325.31..... | 44 |
| 325.32..... | 45 |
| 325.40..... | 47 |
| 325.41..... | 47 |
| 325.42..... | 48 |
| 325.50..... | 48 |
| 325.51..... | 50 |
| 325.52..... | 51 |
| 325.53..... | 51 |
| 325.54..... | 52 |
| 325.60..... | 52 |
| 325.61..... | 53 |

Statutes:

| | |
|---|----------------|
| 22 D. C. Code, 1951 ed., Secs.: | Page |
| 1501 | 39 |
| 1502 | 40 |
| 1503 | 40 |
| 1508 | 41 |
| 33 D. C. Code, 1951 ed., Secs. 401-425 | 17 |
| Internal Revenue Code of 1939 (Wagering Tax Act): | |
| 26 U. S. C. 2550-2565 | 18 |
| 2707 (a) | 3 |
| 3220 | 18 |
| 3221 | 18 |
| 3224 | 18 |
| 3271 | 20, 21, 22, 36 |
| 3273 | 37 |
| 3275 | 26, 27, 37 |
| 3285 | 9, 21, 22, 29 |
| 3286 | 31 |
| 3287 | 33 |
| 3290 | 3, 9, 21, 33 |
| 3291 | 21, 33 |
| 3292 | 20, 34 |
| 3293 | 24, 35 |
| 3294 | 3, 21, 35 |
| 3297 | 36 |
| 3298 | 36 |
| Internal Revenue Code of 1954, Sections 4401-4404, 4411-4413, 4421-4423, 4903, 4907, 6091(b), 6107, 6419, 6806(c), 7262, 7273(b)... | 2 |
| 18 U. S. C. 371 | 4 |
| Revenue Act of 1951, 65 Stat. 452 | 15 |
| Sec. 472 | 38 |
| Miscellaneous: | |
| H. Rep. No. 586, 82d Cong., 1st Sess., pp. 55, 60 | 11, 12 |
| S. Rep. No. 781, 82d Cong., 1st Sess., pp. 113, 118 | 11, 12 |
| 8 Wigmore, <i>Evidence</i> (3rd Ed.) 1940, Section 2259c | 16 |

In the Supreme Court of the United States

OCTOBER TERM, 1954

No. 203

FRANK LEWIS, PETITIONER

v.

UNITED STATES OF AMERICA

*ON WRIT OF CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT*

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the United States Court of Appeals for the District of Columbia Circuit (R. 34) is reported at 214 F. 2d 853. The opinion of the Municipal Court of Appeals for the District of Columbia (R. 29) is reported at 100 A. 2d 40. The opinion of the Municipal Court for the District of Columbia (R. 4-26) is not reported.

JURISDICTION

The judgment of the Court of Appeals was entered on June 10, 1954 (R. 35). The petition for a writ of certiorari was filed on July 9, 1954, and granted on October 14, 1954 (R. 36).

The jurisdiction of this Court rests on 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED

Necessarily conceding the validity of the Wagering Tax Act as applied in the 48 States and upheld in *United States v. Kahriger*, 345 U. S. 22, petitioner argues that it is unconstitutional in the District of Columbia where gambling has been outlawed by Congress. As regards the application of the Act in the District of Columbia, the questions presented are:

1. Whether petitioner may withhold payment of the \$50 occupational tax on persons accepting wagers on the ground that its payment would tend to incriminate him.

2. Whether the posting requirements of the Act violate petitioner's right against unreasonable search and seizure secured to him by the Fourth Amendment.

CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS INVOLVED

The pertinent provisions of the Constitution of the United States, the Act of October 20, 1951, 65 Stat. 529, 26 U. S. C. 3285-3298,¹ and Treasury Regulations involved are printed in the Appendix, *infra*, pp. 29-53.

¹ The references in this brief to Title 26 are to the United States Code, 1952 edition, containing the Internal Revenue Code of 1939, as amended. In the Internal Revenue Code of 1954, the wagering tax provisions are found in Sections 4401-4404, 4411-4413, 4421-4423, 4903, 4907, 6091 (b), 6107, 6419, 6806 (c), 7262, and 7273 (b).

STATEMENT

On October 7, 1952, an information was filed in the Municipal Court for the District of Columbia charging petitioner (R. 1) under 26 U. S. C. 3294 (a) and 26 U. S. C. 2707 (a), as made applicable by 3294 (c), with engaging in the business of accepting wagers during December 1951 without having paid the occupational tax required by 26 U. S. C. 3290.² The Municipal Court granted peti-

² 26 U. S. C. 3290:

A special tax of \$50 per year shall be paid by each person who is liable for tax under subchapter A or who is engaged in receiving wagers for or on behalf of any person so liable.

26 U. S. C. 3294:

(a) Failure to pay tax.

Any person who does any act which makes him liable for special tax under this subchapter, without having paid such tax, shall, besides being liable to the payment of the tax, be fined not less than \$1,000 and not more than \$5,000.

* * * * *

(c) Willful violations.

The penalties prescribed by section 2707 with respect to the tax imposed by section 2700 shall apply with respect to the tax imposed by this subchapter.

26 U. S. C. 2707 (a):

Any person who willfully fails to pay, collect, or truthfully account for and pay over the tax imposed by section 2700 (a), or willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty of the amount of the tax evaded, or not paid, collected, or accounted for and paid over, to be assessed and collected in the same manner as taxes are assessed and collected. * * *

tioner's motion to dismiss the information (R. 26). In its written opinion (R. 4-26), it held the Wagering Tax Act unconstitutional as applied to petitioner in the District of Columbia on the grounds that, since laws enacted by Congress prohibit gambling in the District, the Act (1) imposes penalties in the guise of taxes, and (2) compels a person who endeavors to comply with the Act to give information which would incriminate him under both the District gambling laws and the Federal conspiracy statute, 18 U. S. C. 371.

The Government appealed the dismissal to the Municipal Court of Appeals for the District of Columbia, which reversed the trial court on the authority of the decision of this Court in *United States v. Kahriger*, 345 U. S. 22 (R. 29-33). The Court of Appeals granted a petition for allowance of appeal and affirmed the judgment of the Municipal Court of Appeals on the same grounds (R. 34-35).

SUMMARY OF ARGUMENT

I

In *United States v. Kahriger*, 345 U. S. 22, this Court upheld the very tax here involved against the contentions that it is an attempt to penalize gambling rather than a true tax and that its registration provisions would violate the Fifth Amendment to the Constitution. If the tax is valid in the United States as a whole, it must be valid in the District of Columbia, which is a part

of the United States subject to the general taxing power of the United States.

Petitioner's whole argument is based on the erroneous premise that the Federal Government may not tax an activity illegal under District of Columbia law because the mere payment of the tax would reveal acts incriminatory under federal law. This Court has made clear, however, that the Government may tax what it also forbids. *United States v. Stafoff*, 260 U. S. 477, 480. The tax here involved is not a tax which applies nationally only to activity which is illegal under federal law. It is a national tax applicable to all wagering, whether legal or illegal under federal law. This Court in the *Kahriger* case found that it was a revenue measure representing a proper exercise of the federal taxing power. The fact that its incidence in a particular locality is upon an activity illegal under federal law no more changes the nature of the tax as a tax than does the fact that the income tax may reach profits from illegal federal activity change the nature of that tax. The special position of the District of Columbia in the federal scheme cannot change the character of a national tax.

II

A. The previous holdings of this Court, that the Federal Government may tax what it forbids, necessarily carry the implication that the priv-

ilege against self-incrimination does not justify the failure to pay a valid tax. As this Court pointed out in *United States v. Kahriger*, 345 U. S. 22, 32-33, the statute adequately informs anyone subject to its terms, before he engages in the taxed activity, that if he wishes to engage or continue in such activity, he must do so subject to its terms. His election to continue the taxed activity is a voluntary choice, and not compulsory self-incrimination.

Whether the tax is due before or after the actual placing of a wager is immaterial. It was not the due date of the tax but the effective date of the statute which gave petitioner the warning that if he engaged in the business of taking wagers, he would be subject to regulation and disclosure. The statute, which did not become effective until ten days after its enactment, gave petitioner adequate notice of its consequences.

The Fifth Amendment does not guarantee a right to engage in future criminal business activity. Since petitioner had a choice of continuing business subject to the tax or discontinuing such business, any self-incriminatory results of paying the tax, whether as to present or past activity, would represent a voluntary choice on his part, and would not be the result of compulsion. And since the tax is not one which in its nation-wide impact is limited to activity always illegal under federal law, it cannot be said that its purpose is merely to uncover illegal activity.

The tax is a nation-wide revenue measure; its impact on activity illegal in the District of Columbia is incidental.

B. Petitioner's argument that the \$50 tax is retrospective in operation in that a wager must be accepted before the tax is due, while irrelevant, is also erroneous. The reference in the occupational tax to those who must pay the 10% tax on wagers actually accepted is designed merely to specify the classes of gambling entrepreneurs who must pay the occupational tax, as distinguished from those engaged in certain types of wagering not covered by the Act. When the statute is read as a whole, it is clear that the occupational tax is due before any gambling activity is commenced.

III

Petitioner's argument that the Wagering Tax Act effects an unlawful search and seizure by requiring the taxpayer to supply information which might serve as "probable cause" for a search warrant is only a less substantial variation of the argument predicated upon the Fifth Amendment. There is, of course, no actual search and seizure; nor is there any compulsory production of private records. The posting and listing requirements relate to records required by law to be kept. Their availability to government inspection, established by *Kahriger* as a valid requirement under the Fifth Amendment, is no less proper under the Fourth. *Wilson v. United States*, 221 U. S. 361;

Davis v. United States, 328 U. S. 582; *Shapiro v. United States*, 335 U. S. 1.

ARGUMENT

In *United States v. Kahriger*, 345 U. S. 22, this Court upheld the very occupational tax here involved against the contentions that it is an attempt to penalize gambling rather than a true tax, and that its registration provisions would violate the Fifth Amendment to the Constitution. Petitioner argues that, nevertheless, the tax is invalid in the District of Columbia because payment thereof would reveal activities made illegal under federal law in the District. The net effect of his argument, if sustained, would be to take the District of Columbia out of the federal taxing power as to any tax on activities which are normally regulated in the exercise of a state's police power, such as dealings in narcotics, liquor, firearms, etc. It is the Government's position that the Constitution requires no such incongruous result. The District of Columbia, though voteless, is a part of the United States subject to the general taxing power of the United States.

I. A nation-wide revenue measure may constitutionally reach activities illegal under federal law

The foundation of petitioner's argument is the contention that the Federal Government may not tax an activity illegal under District of Columbia law because the mere payment of the tax would

reveal acts incriminatory under federal law. The elaborate argument as to the relation between the 10% tax on wagers actually placed and the \$50 occupational tax, here involved,³ on the business of engaging in wagering (Br. 6-17, 24-25) (which, as we show *infra*, pp. 20-22, is in itself fallacious), is an effort to show that the \$50 tax is imposed upon illegal activities which have taken place before the tax is due. The entire argument is largely irrelevant because petitioner's basic premise is erroneous. A general nation-wide tax is not rendered invalid because of its incidence upon activities which are, as to a particular individual or individuals in a particular locality, illegal.

This Court has ruled that federal taxes on activities forbidden by federal law are legitimate exercises of Congress' taxing powers. "A law which imposes a tax on intoxicating liquor, whether legally or illegally made, is not in conflict with another law which prohibits the making of any such liquor." *United States v. One Ford Coupe*, 272 U. S. 321, at 327. "A tax on intoxicating liquor does not cease to be such because the sovereign has declared that none shall be manufactured, and because the main purpose in re-

³ Of course, only the \$50 occupational tax imposed by 26 U. S. C. 3290 is directly involved in the present indictment for failure to pay this tax. Petitioner has not been charged with failure to pay the 10% excise tax on wagers accepted under 26 U. S. C. 3285.

taining the tax is to make law-breaking less profitable." *Id.* at 328. In *United States v. Yuginovich*, 256 U. S. 450, at 462, the Court said:

That Congress may under the broad authority of the taxing power tax intoxicating liquors notwithstanding their production is prohibited and punished, we have no question. The fact that the statute in this aspect had a moral end in view as well as the raising of revenue, presents no valid constitutional objection to its enactment.

The Court, observing that Congress had power both to tax and prohibit the same activity, concluded that such was not the Congressional intent in the situation there presented. But after passage of a Supplemental Act expressing intent to keep the tax in effect, the Court, consistently with the principles previously expressed, held the tax applicable in *United States v. Stafoff*, 260 U. S. 477, reiterating, "Of course Congress may tax what it also forbids." 260 U. S. at 480.

Petitioner argues that the rationale of these prohibition cases is inapplicable because under prohibition there could be some legal as well as illegal manufacture of liquor (Br. 16). But this attempted distinction serves merely to support the validity of the tax here involved. This is a national tax, applicable to all wagering, whether legal or illegal. It is admittedly valid in all parts of the United States other than places like the

District of Columbia where there are federal statutes prohibiting gambling. Thus the tax is not imposed only on activities illegal under federal law; it is imposed on certain activities whether or not they happen to be illegal under federal law. The fact that gambling happens to be unlawful under statutes enacted by Congress pursuant to its police powers over the District of Columbia no more changes the nature of the tax as a tax than does the fact that the income tax may reach profits of certain individuals from illegal federal activity change the nature of that tax.

This Court held in the *Kahriger* case that the wagering tax is a revenue measure, even though it may also have incidental regulatory effects, 345 U. S. at pp. 27-28. As is there pointed out, 345 U. S. at p. 28, the wagering tax actually produces more revenue than the narcotics and firearms taxes, upheld in such cases as *United States v. Doremus*, 249 U. S. 86; *Nigro v. United States*, 276 U. S. 332 (narcotics); *United States v. Sanchez*, 340 U. S. 42 (marihuana); *Sonzinsky v. United States*, 300 U. S. 506.⁴ Thus this Court

⁴ The legislative history shows that the Act was designed as a revenue measure. H. Rep. No. 586, 82d Cong., 1st Sess., p. 55 and S. Rep. No. 781, 82d Cong., 1st Sess., p. 113, state:

"Commercialized gambling holds the unique position of being a multi-billion-dollar, Nation-wide business that has remained comparatively free from taxation by either State or Federal Governments. This relative immunity from taxation has persisted in spite of the fact that wagering has many

has effectively disposed of petitioner's argument that the Act imposes a penalty rather than a tax. Manifestly, the application of a national revenue measure cannot depend on whether it actually does or does not produce revenue in any one particular locality. In fact, the constitutional questions which troubled the Court with respect to the taxes involved in the cases cited above, *i. e.*, whether the regulatory effect of such measures constituted an infringement on the police powers reserved to the states, do not apply to the District of Columbia since in that area Congress does have police power. *Atlantic Cleaners and Dyers v. United States*, 286 U. S. 427.

The fallacy of petitioner's argument is that it treats this tax as if it were imposed in the District of Columbia alone and considers the tax as one on activity which must always be illegal under federal law. This is, however, a nationwide tax, designed to produce and actually producing revenue. Its particular incidence in the District of Columbia is a fortuitous result of the

characteristics which make it particularly suitable as a subject for taxation. Your committee is convinced that the continuance of this immunity is inconsistent with the present need for increased revenue, especially at a time when many consumer items of a seminecessity nature are being called upon to bear new or additional tax burdens."

And H. Rep. No. 586 at p. 60 and S. Rep. No. 781 at p. 118, both say:

"The committee conceives of the occupational tax as an integral part of any plan for the taxation of wagers and as essential to the collection and enforcement of such a tax."

special position of the District of Columbia. That special circumstance does not, however, alter the fact that the tax is a valid exercise of the taxing power of the United States, applicable to the whole of the United States, including the District of Columbia.

II. The privilege against self-incrimination does not justify the failure to pay the tax

A. Before any tax was due, the statute informed petitioner that if he continued in the wagering business, he would be subject to taxation and regulation

The cases discussed above, in which this Court has held that the federal government may tax what it forbids, necessarily carry the implication that the privilege against self-incrimination does not justify the failure to pay a valid tax. *United States v. Stafoff*, 260 U. S. 477; *United States v. One Ford Coupe*, 272 U. S. 321, 327; *United States v. Sullivan*, 274 U. S. 259, 263. Although the question of privilege was not discussed in most of the cases and was not reached in the *Sullivan* case because it was held to have been prematurely raised, the upholding of the taxing power as to illegal activities necessarily implies that the tax must be paid. The rationale which must underlie such rulings was succinctly stated by this Court in the *Kahriger* case, 345 U. S. at pp. 32-33, as follows:

Under the registration provisions of the wagering tax, appellee is not compelled to

confess to acts already committed, he is merely informed *by the statute* that in order to engage in the business of wagering in the future he must fulfill certain conditions. [Emphasis added.]

See also the New York case of *E. Fougera & Co. Inc. v. City of New York*, 224 N. Y. 269, cited by the Court in the *Kahriger* opinion in support of the above holding (345 U. S. at 33, fn. 13). In the *Fougera* case, a city ordinance required dealers in patent medicines to register the names of ingredients for which therapeutic effects were claimed with the Department of Health. It was stipulated by the parties that the objective of the ordinance was to secure information on which to base prosecutions for violations of law. 224 N. Y. at 278. To the contention that this ordinance violated the plaintiff's privilege against self-incrimination, the court, per Cardozo, J., replied (p. 279):

The sale of medicines is a business subject to governmental regulation. One who engages in it is not compelled by this ordinance to expose himself to punishment for any offense already committed. *He is simply notified of the conditions upon which he may do business in the future. He makes his own choice. To such a situation, the privilege against self-accusation has no just application.* [Emphasis added.]

Petitioner misconceives the import of this holding by his argument that it applies only where the

tax must be paid before the illegal act is done and by his attempt to show that in this case the tax is not due until after an illegal act has occurred. It is not the due date of the tax but the effective date of the statute which is controlling. It is the statute which gave petitioner the warning that if he engaged in the business of taking wagers, he would be subject to regulation and disclosure. That this is so is shown by the Court's reference, in footnote 13 of the *Kahriger* opinion (345 U. S. at 33), to the cases holding that records required by law to be kept are not within the privilege. *Davis v. United States*, 325 U. S. 582, 590; *Shapiro v. United States*, 335 U. S. 1, 35. Manifestly, the records actually kept in such cases would, for the most part, relate to transactions which had occurred before the entries were made, and certainly before any attempt would be made to use them for incriminatory purposes.

Whether the tax is due before or after the actual placing of a wager is thus immaterial. The statute in this case gave petitioner ample warning of its consequences. The Act was passed on October 20, 1951. 65 Stat. 529. Its provisions became effective November 1, 1951, as to both taxes on wagers and the occupational tax.⁶ If petitioner was engaged in business on October 20, the earliest requirement to register gave him ten

⁶ Section 472, Revenue Act of 1951, 65 Stat. 452, 531, Appendix, *infra*, pp. 38-39.

days to elect whether or not to register and pay the occupational tax. The tax thus did not apply to past gambling activities but to activities which petitioner might elect to continue or commence after November 1, 1951. Petitioner was informed before he ever accepted any wager after November 1, 1951, that if he wished to engage in this business he would have to pay both the \$50 occupational and 10% tax.

It is unsound to argue, as petitioner does, that if he committed certain crimes after November 1st, the excise tax on these transactions would be unconstitutional when the time came to make a tax report because the transactions would then be in the past. On this basis no income tax on illegal activities could be collected because the income would have been earned before the tax was due.

No one forced petitioner to engage in the wagering business after November 1. When he elected to remain in the business, he did so with full knowledge that the Federal Government had imposed a tax on this occupation. He could not elect to continue in the business and reject the tax burdens which Congress had placed upon it. "[T]here is no compulsory self-incrimination in a rule of law which merely requires beforehand a future report on a class of future acts among which a particular one may or may not in future be criminal at the choice of the party reporting." 8 Wigmore, *Evidence* (3rd ed.) 1940, Sec. 2259c.

The prospective character of the Act and the voluntary nature of the "reporting" likewise dispose of petitioner's claim that registration for the occupation tax would incriminate him of a conspiracy to violate District of Columbia laws against gambling in that registration to obtain the stamp might constitute an overt act of such conspiracy. He again ignores the fact that he had an election to be made between October 20 and November 1 whether or not to go into the gambling business or continue therein. And, again, if it be conceded that his only means of avoiding the penalty for crime was to discontinue it, or not commence it, the short answer is that the Fifth Amendment does not guarantee a right to engage in future criminal business activity.

The logical result of petitioner's position, that activity forbidden by federal law in a particular locality cannot be taxed, would be that no tax on activities made illegal in the exercise of Congressional police power in the District of Columbia would be collectible in the District of Columbia. A great many activities, which are in the states punishable only under state law, such as robbery and blackmail, are offenses under the D. C. Code. That certainly cannot mean that the income obtained from such illegal activities is taxable everywhere but in the District of Columbia. Cf. *Rutkin v. United States*, 343 U. S. 130. The D. C. Code, Title 33, Sections 401 through 425 (the Uniform Narcotic Drug Act), forbids posses-

sion or sale of narcotics except as authorized in that Act. This does not mean that the federal Harrison Act taxing narcotics, which in operation is closely analagous to the Wagering Tax Act,* does not apply in the District. Prosecutions thereunder have been sustained without question. *E. g., Coates v. United States*, 186 F. 2d 338 (C. A. D. C.); *Dear Check Quong v. United States*, 160 F. 2d 251 (C. A. D. C.). To petitioner's argument that the District of Columbia Narcotic Drug Act allows certain forms of dealing in drugs, whereas gambling is entirely prohibited in the District, the answer is that illegal traffic in the District is entirely forbidden. For illegal traffic would be the only kind under consideration with respect to anyone who, like petitioner, would be claiming an unconstitutional

* 26 U. S. C. 3220 of the Code imposes a special tax ranging from \$1 to \$24 on "every person who imports, manufactures, produces, compounds, sells, deals in, dispenses, or gives away opium, coca leaves, * * * or any * * * derivative * * * thereof." To facilitate administration, Section 3221 requires such persons to register with the Collector of the District in which their businesses are located, their names or styles, places of business, and places where such business is to be carried on. Both registration and tax payment are to be effected, as in the Wagering Tax Act, on or before July 1st of each year. Section 3224 then makes it unlawful (with certain exceptions not here relevant) for any person who has not registered and paid the special tax, to traffic in, or transport or possess narcotic drugs. Sections 2550 through 2565 impose taxes on the drugs themselves and require tax stamps to evidence payment and use of government order forms on transfer.

conflict between the national and the local act, since unconstitutional operation as to *the complainant* must be alleged. Moreover, as we have hitherto pointed out, the tax here involved, as a national tax, is not imposed on an activity which is wholly illegal under federal law. It is imposed on a general activity, and the fact that such activity happens to be illegal in the District of Columbia is incidental.

Petitioner also argues that even if the act be deemed to operate prospectively, registration might furnish "leads" to prosecutors as to former gambling activity, thus violating the Fifth Amendment. Again the conclusive answer is that there is no compulsion to furnish any information since petitioner has the alternative of discontinuing business, and voluntary self-incrimination has no relation to the Fifth Amendment.

It is well to emphasize here that, as we have discussed in Point I, this is not a tax on an activity illegal throughout the nation under federal law. Petitioner's whole argument is based on the assumption that this tax is equivalent to a tax on acts which are national federal crimes, such as robbery of a national bank or espionage. Were that the case there might be a serious question, both as to whether it would be a true tax and not a penalty, and whether it could have any purpose other than self-incrimination. But that is not this case. This is a national tax which

this Court has found to be a revenue measure. Its character as such does not change because of its impact in the District of Columbia, where Congress, functioning much like a state legislature, has outlawed gambling, as has the legislature of practically every state. If the tax is valid in the United States as a whole it must be valid in the District of Columbia, which is part of the United States. The incidental illegality under District of Columbia law is irrelevant. Illegality of source of income has never freed a taxpayer from liability for taxes. *Rutkin v. United States*, 343 U. S. 130, 137, 140; *Johnson v. United States*, 318 U. S. 189; *United States v. Sullivan*, 274 U. S. 259; *United States v. One Ford Coupe*, 272 U. S. 321, 327; *United States v. Yuginovich*, 256 U. S. 450, 462; *United States v. Stafoff*, 260 U. S. 477, 480.

B. The \$50 occupational tax is prospective in operation

While, as noted above, we regard it as immaterial whether the \$50 tax on the business of wagering is due before or after a wager is accepted, since the statute itself was prospective in operation, it should be noted that the \$50 tax is in fact prospective in application. The Act specifically provides for registration and payment of the special tax *before any* gambling activity is commenced. Thus, 26 U. S. C. 3271, made applicable by 26 U. S. C. 3292, provides:

SECTION 3271. *Payment of tax.*

(a) *Condition precedent to doing business.* No person shall be engaged in or carry on any trade or business mentioned in this chapter until he has paid a special tax therefor in the manner provided in this chapter.

And Section 3294 provides:

Failure to Pay Tax. Any person who does any act which makes him liable for special tax under this subchapter, without having paid such tax, shall, besides being liable to the payment of the tax, be fined not less than \$1,000 and not more than \$5,000.

Ignoring the plain meaning of this language, petitioner advances an involved and fallacious analysis to support his thesis that the statute calls for retrospective reporting of crime. His argument runs as follows: Since the statute says (Section 3290) that the \$50 tax shall be paid by persons liable for paying the tax on wagers (Section 3285), and since under Section 3285 and Treasury Regulations 132, Section 325.25, there is no tax due on these wagers until one has been accepted, therefore registration (Section 3291) and the special \$50 tax on the business of wagering are not due until a wager has been accepted. There is thus, he argues, a required reporting of past crimes. The complete answer, as discussed above, is the fact that the Act was set up with a future effective date as to both the 10% tax

and as to the special \$50 tax. But even on petitioner's mistaken theory that the \$50 occupational tax would be invalid if it were not due until after wagers had been accepted, his argument fails. For the reference to subpart A (Section 3285)—*i. e.*, to persons liable for the 10% excise tax—in the occupational tax and registration sections is obviously designed merely to identify the classes of gambling entrepreneurs subject to the tax with the classes of wagers coming within the tax, as opposed to certain types of wagering not covered by the Act. To read this reference as having a time connotation ignores the remainder of the statute. It ignores particularly the provision (Section 3271 (a), quoted *supra* p. 21) which states precisely that the tax is due before any wagers are accepted.

It may be observed, moreover, that if petitioner's erroneous theory and strained construction were more persuasive than they are, there could still be no justification for preferring his interpretation to the clear language of the occupational tax requirement. Statutes should be read to save, not to destroy, what Congress wrote. *United States v. Harriss*, 347 U. S. 612, 618. This principle has special force where the plain statutory language effects a valid result.

In sum, the Act is prospective in operation and presents no valid ground of complaint under the Fifth Amendment. The privilege against self-

incrimination applies retrospectively for the protection of persons accused of crime, not *in futuro* for that of persons desirous of launching a criminal enterprise under its aegis. Petitioner is in effect contending for a right to violate local gambling laws free of the restraints which are incidental effects of the tax. To uphold his contention it would have to be said that where Congress has taxed a field of activity presumed fruitful, certain citizens have a right to exemption from the tax burden because their occupations are criminal enterprises. This Court's decisions refute such an argument.

III. The posting and listing provisions of the Wagering Tax Act do not constitute an unlawful search and seizure prohibited by the Fourth Amendment

The brief argument petitioner predicates upon the Fourth Amendment (Pet. Br. 5, 17-18) is but a weaker variant of his contention that the Wagering Tax Act infringes his privilege against self-incrimination. He claims that the posting and listing provisions of the Act supply evidence of his alleged gambling activities; that such evidence could supply the "probable cause" required for a search warrant; and that the result is somehow an unlawful search and seizure. But the decisive answer to the self-incrimination point, discussed above and settled by *Kahriger*, is a *fortiori* determinative here. Petitioner cannot complain that payment of the valid federal tax (and

compliance with the valid regulations enforcing such payment) may incriminate him; there is obviously even less substance in the objection that the information required for collection of the tax might serve as a basis for a search warrant.⁷

⁷ It should be noted that, insofar as it is predicated upon the requirement that the wagering tax stamp be posted in the taxpayer's place of business (26 U. S. C. 3293, *infra*, p. 35), petitioner's Fourth Amendment argument is not properly in this case. He is not charged with failure to post the stamp, but with failure to pay the tax, as he must do before he receives a stamp to post. While the Fifth Amendment rather than the Fourth was involved, this Court's opinion in *United States v. Kahriger*, 345 U. S. 22, would seem to be conclusive against petitioner's right to complain of the posting requirement. The Court there said (p. 32):

Since appellee failed to register for the wagering tax, it is difficult to see how he can now claim the privilege even assuming that the disclosure of violations of law is called for. In *United States v. Sullivan*, 274 U. S. 259, defendant was convicted of refusing to file an income tax return. It was assumed that his income "was derived from business in violation of the National Prohibition Act." *Id.*, at 263. "As the defendant's income was taxed, the statute of course required a return. See *United States v. Sisco*, 262 U. S. 135. In the decision that this was contrary to the Constitution we are of opinion that the protection of the Fifth Amendment was pressed too far. If the form of return provided called for answers that the defendant was privileged from making he could have raised the objection in the return, but could not on that account refuse to make any return at all." 274 U. S., at 263.

That declaration, peculiarly apposite here, is of course only a specific application of the principle that the Court will avoid constitutional adjudication except in cases requiring it. *Rescue Army v. Municipal Court*, 331 U. S. 549, 568 *et seq.*

Since the claim is neither made, nor could be, that the posting and filing are actual searches or seizures, petitioner's argument is actually a fanciful extension of the search and seizure prohibition. The argument would say that a search warrant, though issued upon probable cause and otherwise fully complying with Fourth Amendment standards, would be illegal if a tax return had disclosed any information contributing to the probable cause for the warrant. This is plainly a long step from the doctrine that a compulsory production of books or papers may amount to a search and seizure, *Boyd v. United States*, 116 U. S. 616. And the error of the argument becomes especially apparent when it is recalled that the *Boyd* doctrine applies only to ban compulsory production of *private* books or papers, whereas the posting provisions relate to documents of a public character.

This Court clearly stated in the *Boyd* case, 116 U. S. at 623, that

* * * the supervision authorized to be exercised by officers of the revenue over the manufacture or custody of excisable articles, and the entries thereof in books required by law to be kept for their inspection, are necessarily excepted out of the category of unreasonable searches and seizures.

Since the Wagering Tax Act, as held in *Kahriger*, is clearly a revenue measure, the requirement for

posting and exhibition for use of the officers of the Bureau of Internal Revenue comes squarely within this principle. And the requirement of Section 3275 that each Director of Internal Revenue keep a list of taxpayers for public inspection, with provision for furnishing of copies thereof, "as of a public record," to prosecuting officers of state, county, or municipality, comes within the same exception to the Fourth Amendment privilege.

Both posting and listing requirements are also within the broader rule which *Boyd* foreshadowed, the rule governing records required to be kept for a governmental purpose. This principle first evolved out of federal revenue law and the powers inherent in its constitutional basis, but has been recognized as applicable to other records required to be kept on activities subject to legitimate federal regulation. *Wilson v. United States*, 221 U. S. 361; *Davis v. United States*, 328 U. S. 582; *Shapiro v. United States*, 335 U. S. 1. The rationale of the rule is that an overriding public purpose in the record-keeping requirement removes that privacy the violation of which is deemed destructive of the Fourth Amendment's privilege. "The principle applies not only to public documents in public offices, but also to records required by law to be kept in order that there may be suitable information of transactions which are the appropriate subjects of governmental regulation and the enforcement of re-

strictions validly established. There the privilege, which exists as to private papers, cannot be maintained." *Wilson v. United States, supra* at 380, quoted in *Shapiro, supra*, at 17.⁸

It is to be observed, finally, that petitioner's theory would not only affect the posting and listing provisions but would bar any requirement of the Wagering Tax Act which might provide leads for issuance of a warrant. For example, the registration provisions themselves would give all the leads necessary for probable cause since such information is made available to prosecution officers.⁹ As we have indicated, it is apparent, especially in light of the *Kahriger* decision, that petitioner's Fourth Amendment argument is in essence merely his self-incrimination argument viewed from the physical aspect of the stamp on the wall and the list in the Director's office. The search and seizure argument of "leads" for probable cause for a search warrant is subject to the

⁸ In *Davis v. United States, supra*, at 593, the Court, speaking of the claimed illegal search and seizure there involved, noted also the difference between a search of a home and a place of business:

"Where the officers seek to inspect *public* documents at the place of business where they are required to be kept, permissible limits of persuasion are not so narrow as where *private* papers are sought."

This distinction is apposite to the claimed search and seizure constituted by the posting of the tax stamp at petitioner's place of business and the maintenance of the list of taxpayers at the office of the Director of Internal Revenue.

⁹ 26 U. S. C. 3275 (Appendix, *infra*, p. 38).

same answers as the argument of unconstitutional self-incrimination.¹⁰ Whatever its form, the contention is merely an attempt to clothe in varying terms petitioner's basic and untenable position that a tax on an illegal business is unconstitutional.

CONCLUSION

The issues raised come within the holding of the Court in *United States v. Kahriger*, 345 U. S. 22, and there is nothing in petitioner's position to justify an exception to that ruling. It is respectfully submitted that the judgment of the Court of Appeals should be affirmed.

SIMON E. SOBELOFF,
Solicitor General.

WARREN OLNEY III,
Assistant Attorney General.

MARVIN E. FRANKEL,
*Special Assistant to the
Attorney General.*

BEATRICE ROSENBERG,
JOSEPH A. BARRY,
Attorneys.

DECEMBER 1954.

¹⁰ In *Irvine v. California*, 347 U. S. 128, this Court rejected the contention that the gambling tax stamp found on petitioner's person on arrest and other documentary evidence from the Bureau of Internal Revenue constituted privileged materials, thus assuming the constitutionality of the statutory requirement.

APPENDIX

The Fourth Amendment to the Constitution provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The Fifth Amendment to the Constitution provides in pertinent part:

No person shall * * * be compelled in any criminal case to be a witness against himself * * *.

The Internal Revenue Code of 1939, as amended,¹¹ provides in pertinent part as follows:

CHAPTER 27A—WAGERING TAXES

SUBCHAPTER A—TAX ON WAGERS

Sec. 3285. Tax.

(a) *Wagers*—There shall be imposed on wagers, as defined in subsection (b), an excise tax equal to 10 per centum of the amount thereof.

¹¹ See footnote 1 *supra*, p. 2.

(b) *Definitions*—For the purposes of this chapter—

(1) The term “wager” means (A) any wager with respect to a sports event or a contest placed with a person engaged in the business of accepting such wagers. (B) any wager placed in a wagering pool with respect to a sports event or a contest, if such pool is conducted for profit, and (C) any wager placed in a lottery conducted for profit.

(2) The term “lottery” includes the numbers-game, policy, and similar types of wagering. The term does not include (A) any game of a type in which usually (i) the wagers are placed, (ii) the winners are determined, and (iii) the distribution of prizes or other property is made, in the presence of all persons placing wagers in such game, and (B) any drawing conducted by an organization exempt from tax under section 101, if no part of the net proceeds derived from such drawing inures to the benefit of any private shareholder or individual.

(c) *Amount of Wager*.—In determining the amount of any wager for the purposes of this subchapter, all charges incident to the placing of such wager shall be included; except that if the taxpayer establishes, in accordance with regulations prescribed by the Secretary, that an amount equal to the tax imposed by this subchapter has been collected as a separate charge from the per-

son placing such wager, the amount so collected shall be excluded.

(d) *Persons Liable for Tax.*—Each person who is engaged in the business of accepting wagers shall be liable for and shall pay the tax under this subchapter on all wagers placed with him. Each person who conducts any wagering pool or lottery shall be liable for and shall pay the tax under this subchapter on all wagers placed in such pool or lottery.

(e) *Exclusions From Tax.*—No tax shall be imposed by this subchapter (1) on any wager placed with, or on any wager placed in a wagering pool conducted by, a pari-mutuel wagering enterprise licensed under State law, and (2) on any wager placed in a coin-operated device with respect to which an occupational tax is imposed by section 3267.

(f) *Territorial Extent.*—The tax imposed by this subchapter shall apply only to wagers (1) accepted in the United States, or (2) placed by a person who is in the United States (A) with a person who is a citizen or resident of the United States, or (B) in a wagering pool or lottery conducted by a person who is a citizen or resident of the United States.

Sec. 3286. Credits and refunds.

(a) No overpayment of tax under this subchapter shall be credited or refunded (otherwise than under subsection (b)), in pursuance of a court decision or other-

wise, unless the person who paid the tax establishes, in accordance with regulations prescribed by the Secretary, (1) that he has not collected (whether as a separate charge or otherwise) the amount of the tax from the person who placed the wager on which the tax was imposed, or (2) that he has repaid the amount of the tax to the person who placed such wager, or unless he files with the Secretary written consent of the person who placed such wager to the allowance of the credit or the making of the refund. In the case of any laid-off wager, no overpayment of tax under this subchapter shall be so credited or refunded to the person with whom such laid-off wager was placed unless he establishes, in accordance with regulations prescribed by the Secretary, that the provisions of the preceding sentence have been complied with both with respect to the person who placed the laid-off wager with him and with respect to the person who placed the original wager.

(b) Where any taxpayer lays off part or all of a wager with another person who is liable for tax under this subchapter on the amount so laid off, a credit against the tax imposed by this subchapter shall be allowed, or a refund shall be made to, the taxpayer laying off such amount. Such credit or refund shall be in an amount which bears the same ratio to the amount of tax which such taxpayer paid under this subchapter on the original wager as the amount so laid off bears to the amount of

the original wager. Credit or refund under this subsection shall be allowed or made only in accordance with regulations prescribed by the Secretary; and no interest shall be allowed with respect to any amount so credited or refunded.

Sec. 3287. Certain provisions made applicable.

All provisions of law, including penalties, applicable with respect to any tax imposed by section 2700 shall, insofar as applicable and not inconsistent with the provisions of this subchapter, be applicable with respect to the tax imposed by this subchapter. In addition to all other records required pursuant to section 2709, each person liable for tax under this subchapter shall keep a daily record showing the gross amount of all wagers on which he is so liable.

SUBCHAPTER B—OCCUPATIONAL TAX

Sec. 3290. Tax.

A special tax of \$50 per year shall be paid by each person who is liable for tax under subchapter A or who is engaged in receiving wagers for or on behalf of any person so liable.

Sec. 3291. Registration.

(a) Each person required to pay a special tax under this subchapter shall register with the collector of the district—

(1) his name and place of residence;

(2) if he is liable for tax under subchapter A, each place of business where the activity which makes him so liable is carried on, and the name and place of residence of each person who is engaged in receiving wagers for him or on his behalf; and

(3) if he is engaged in receiving wagers for or on behalf of any person liable for tax under subchapter A, the name and place of residence of each such person.

(b) Where subsection (a) requires the name and place of residence of a firm or company to be registered, the names and places of residence of the several persons constituting the firm or company shall be registered.

(c) In accordance with regulations prescribed by the Secretary, the collector may require from time to time such supplemental information from any person required to register under this section as may be needful to the enforcement of this chapter.

Sec. 3292. Certain provisions made applicable.

Sections 3271, 3273 (a), 3275, 3276, 3277, 3279, and 3280 shall extend to and apply to the special tax imposed by this subchapter and to the persons upon whom it is imposed, and for that purpose any activity which makes a person liable for special tax under this subchapter shall be considered to be a business or occupation described in

chapter 27. No other provision of subchapter B of chapter 27 shall so extend or apply.

Sec. 3293. Posting.

Every person liable for special tax under this subchapter shall place and keep conspicuously in his principal place of business the stamp denoting the payment of such special tax; except that if he has no such place of business, he shall keep such stamp on his person, and exhibit it, upon request, to any officer or employee of the Bureau of Internal Revenue.

Sec. 3294. Penalties.

(a) *Failure to Pay Tax*—Any person who does any act which makes him liable for special tax under this subchapter, without having paid such tax, shall, besides being liable to the payment of the tax, be fined not less than \$1,000 and not more than \$5,000.

(b) *Failure to Post or Exhibit Stamp*—Any person who, through negligence, fails to comply with section 3293, shall be liable to a penalty of \$50, and the cost of prosecution. Any person who, through willful neglect or refusal, fails to comply with section 3293, shall be liable to a penalty of \$100, and the cost of prosecution.

(c) *Willful Violations*—The penalties prescribed by section 2707 with respect to the tax imposed by section 2700 shall apply with respect to the tax imposed by this subchapter.

SUBCHAPTER C—MISCELLANEOUS PROVISIONS

Sec. 3297. Applicability of federal and state laws.

The payment of any tax imposed by this chapter with respect to any activity shall not exempt any person from any penalty provided by a law of the United States or of any State for engaging in the same activity, nor shall the payment of any such tax prohibit any State from placing a tax on the same activity for State or other purposes.

Sec. 3298. Inspection of books.

Notwithstanding section 3631, the books of account of any person liable for tax under this chapter may be examined and inspected as frequently as may be needful to the enforcement of this chapter.

* * * * *

Sec. 3271. Payment of tax.

(a) *Condition Precedent To Doing Business.* No person shall be engaged in or carry on any trade or business mentioned in this chapter until he has paid a special tax therefor in the manner provided in this chapter.

(b) *Due Date.* All special taxes shall become due on the 1st day of July in each year, or on commencing any trade or business on which such tax is imposed. In the former case the tax shall be reckoned for one year, and in the latter case it shall be

reckoned proportionately, from the 1st day of the month in which the liability to a special tax commenced, to and including the 30th day of June following.

(c) *How Paid*

(1) Stamp. All special taxes imposed by law, including the tax on stills or worms, shall be paid by stamps denoting the tax.

(2) Assessment

* * * *

Sec. 3273. Stamps.

(a) *Supply.* The Commissioner is required to procure appropriate stamps for the payment of all special taxes imposed by law, including the tax on stills or worms; and the provisions of section 2802 (a) and of sections 3300, 3301, and 3302, and all other provisions of law relating to the preparation and issue of stamps for distilled spirits, fermented liquors, tobacco, and cigars, shall, so far as applicable, extend to and include such stamps for special taxes; and the Commissioner shall have authority to make all needful regulations relative thereto.

* * * *

Sec. 3275. List of special taxpayers for public inspection.

(a) *In Collector's Office.* Each collector shall, under regulations of the Commissioner, place and keep conspicuously in his office, for public inspection, an alpha-

betical list of the names of all persons who shall have paid special taxes within his district, and shall state thereon the time, place, and business for which such special taxes have been paid, and upon application of any prosecuting officer of any State, county, or municipality, he shall furnish a certified copy thereof, as of a public record, for which a fee of \$1 for each one hundred words or fraction thereof in the copy or copies so requested, may be charged.

Section 472, Revenue Act of 1951, 65 Stat. 452, 531, provides as follows.

Effective date of Part VII

The tax imposed by subchapter A of chapter 27A, as added by section 471, shall apply only with respect to wagers placed on or after the first day of the first month which begins more than 10 days after the date of enactment of this Act. No tax shall be payable under subchapter B of chapter 27A, as added by section 471, with respect to any period prior to the first day of the first month which begins more than 10 days after the date of enactment of this Act. In the case of any person who is liable for tax under subchapter A of chapter 27A, as added by section 471, or who is engaged in receiving wagers for or on behalf of any person so liable, and who commenced the activity which makes him subject to such tax, or who was engaged in receiving such

wagers, prior to the first day of the first month specified in the preceding sentence, the tax under subchapter B of chapter 27A, as added by section 471, shall be reckoned proportionately from the first day of such month to and including the thirtieth day of June following and shall be due on, and payable on or before, the last day of the month specified in the preceding sentence.

Title 22, D. C. Code, 1951 ed., Sections 1501, 1502, 1503, 1508 provide:

SEC. 22-1501 [6:151]. LOTTERIES—PROMOTION—SALE OR POSSESSION OF TICKETS

If any person shall within the District keep, set up, or promote, or be concerned as owner, agent, or clerk, or in any other manner, in managing, carrying on, promoting, or advertising, directly or indirectly, any policy lottery, policy shop, or any lottery, or shall sell or transfer any chance, right, or interest, tangible or intangible, in any policy lottery, or any lottery or shall sell or transfer any ticket, certificate, bill, token, or other device, purporting or intended to guarantee or assure to any person or entitle him to a chance of drawing or obtaining a prize to be drawn in any lottery, or in a game or device commonly known as policy lottery or policy or shall, for himself or another person, sell or transfer, or have in his possession for the purpose of sale or transfer, a chance or ticket in or share of a ticket in any lottery

or any such bill, certificate, token, or other device, he shall be fined upon conviction of each said offense not more than \$1,000 or be imprisoned not more than three years, or both. The possession of any copy or record of any such chance, right, or interest, or of any such ticket, certificate, bill, token, or other device shall be prima-facie evidence that the possessor of such copy or record did, at the time and place of such possession, keep, set up, or promote, or was at such time and place concerned as owner, agent, or clerk, or otherwise in managing, carrying on, promoting, or advertising a policy lottery, policy shop, or lottery.

SEC. 22-1502 [6:151a]. POSSESSION OF
LOTTERY OR POLICY TICKETS

If any person shall within the District have in his possession, knowingly, any ticket, certificate, bill, slip, token, paper, writing, or other device used, or to be used, or adapted, devised, or designed for the purpose of playing, carrying on, or conducting any lottery, or the game or device commonly known as policy lottery or policy, he shall be fined upon conviction of each said offense not more than \$500 or be imprisoned for not more than six months, or both.

SEC. 22-1503 [6:152]. PERMITTING SALE OF
LOTTERY TICKETS ON PREMISES.

If any person shall knowingly permit, on any premises under his control in the Dis-

trict, the sale of any chance or ticket in or share of a ticket in any lottery or policy lottery, or shall knowingly permit any lottery or policy lottery, or policy shop on such premises, he shall be fined not less than fifty dollars nor more than five hundred dollars, or be imprisoned not more than one year, or both.

**SEC. 22-1508 [6:157]. GAMBLING POOLS
AND BOOK MAKING**

It shall be unlawful for any person or association of persons to bet, gamble, or make books or pools on the result of any trotting or running race of horses, or boat race, or race of any kind, or on any election, or any contest of any kind, or game of baseball. Any person or association of persons violating the provisions of this section shall be fined not exceeding five hundred dollars or be imprisoned not more than ninety days, or both.

Treasury Regulations 132 relating to Excise and Special Tax on Wagering under Chapter 27A of the Internal Revenue Code provide in pertinent part:

SEC. 325.20. EFFECTIVE PERIOD. The tax on wagers imposed by section 3285 is effective with respect to wagers placed on or after November 1, 1951.

SEC. 325.21. SCOPE OF TAX. (a) Section 3285 imposes a tax on (1) all wagers placed with a person engaged in the business of

accepting wagers upon the outcome of a sports event or a contest; (2) any wager placed in a wagering pool with respect to a sports event or a contest, if such pool is conducted for profit; and (3) any wager placed in a lottery conducted for profit.

(b) A person is engaged in the business of accepting wagers if he makes it a practice to accept wagers with respect to which he assumes the risk of profit or loss depending upon the outcome of the event or the contest with respect to which the wager is accepted. It is not intended that to be engaged in the business of accepting wagers a person must be either so engaged to the exclusion of all other activities or even primarily so engaged. Thus, for example, an individual may be primarily engaged in business as a salesman, and also for the purpose of the tax be engaged in the business of accepting wagers.

* * * * *

SEC. 325.24. PERSON LIABLE FOR TAX.

(a) Every person engaged in the business of accepting wagers with respect to a sports event or a contest is liable for the tax on any such wager accepted by him. Every person who operates a wagering pool or lottery conducted for profit is liable for the tax with respect to any wager or contribution placed in such pool or lottery. To be liable for the tax, it is not necessary that the person engaged in the business of accepting wagers or operating a wagering

pool or lottery physically receive the wager or contribution. Any wager or contribution received by an agent or employee on behalf of such person shall be considered to have been accepted by and placed with such person.

(b) If a person engaged in the business of accepting wagers or conducting a lottery or betting pool for profit lays off all or part of the wagers placed with him with another person engaged in the business of accepting wagers or conducting a betting pool or lottery for profit, he shall, notwithstanding such lay-off, be liable for the tax on the wagers or contributions initially accepted by him. See section 325.34 for the credit and refund provisions applicable with respect to laid-off wagers.

SEC. 325.25. WHEN TAX ATTACHES. (a) The tax attaches when (1) a person engaged in the business of accepting wagers with respect to a sports event or a contest, or (2) a person who operates a wagering pool or lottery for profit, accepts a wager or contribution from a bettor. In the case of a wager on credit, the tax attaches whether or not the amount of the wager is actually collected from the bettor.

* * * * *

SEC. 325.30. RETURNS. (a) Every person required to pay the tax on wagers imposed by section 3285 of the Code shall prepare each month from the daily records required by section 325.32 a return, in

duplicate, on Form 730 in accordance with the instructions thereon. The original return, together with the amount of the tax, shall be filed with the collector of internal revenue for the district in which is located the office or principal place of business of the person required to make the return. If such person resides in the United States, but has no office or principal place of business in the United States, the return shall be filed with the collector of internal revenue for the district in which he resides. If such person has no office, residence, or principal place of business in the United States, the return shall be filed with the collector at Baltimore, Md. The return shall be filed on or before the last day of the month following that for which it is made.

(b) When the last day of the month in which a return and payment are due falls on Sunday or a legal holiday, the return may be filed and payment made on the next secular or business day. A return shall be forwarded to the collector for each month whether or not any liability has been incurred for that month. If a taxpayer ceases operations which make him liable for tax, the last return shall be marked "Final return".

SEC. 325.31. PAYMENT OF TAXES. All taxes are due and payable to the collector of internal revenue, without assessment by the Commissioner or notice from the col-

lector, at the time fixed for filing the return. If the tax is not paid when due, there shall be added as part of the tax interest at the rate of 6 percent per annum from the time the tax became due to the actual date of payment or assessment, whichever is earlier. For provisions with respect to interest generally, including interest on assessments, see section 325.36.

SEC. 325.32. RECORDS—(a) *In general.*

(1) Every person required to pay the excise tax imposed by section 3285 shall keep, or cause to be kept, at his office or principal place of business, or, if he has no office or principal place of business, at his residence or some other convenient or safe location, such records as will clearly show as to each day's operation:

(A) The gross amount of all wagers accepted;

(B) The gross amount of each class or type of wager accepted on each separate event, contest, or other wagering medium. For example, in the case of wagers accepted on a horse race, the daily record shall show separately the gross amount of each class or type of wagers (straight bets, parlays, "if" bets, etc.) accepted on each horse in the race. Similarly, in the case of the numbers game, the daily record shall show the gross amount of each class or type of wagers accepted on each number;

(C) Separately, the gross amount of wagers—

(i) accepted directly by the taxpayer or at any registered place of business of the taxpayer (other than laid-off wagers),

(ii) accepted for his account by agents at any place other than a registered place of business of the taxpayer (other than laid-off wagers), and

(iii) accepted as laid-off wagers from persons subject to the excise tax;

(D) With respect to wagers laid off with others, the name, address, and registration number of each person with whom the laid-off wagers were placed, and the gross amount laid off with each such person, showing separately the gross amount of laid-off wagers with respect to each event, contest, or other wagering medium. For example, the daily record shall show the gross amount laid off on each horse in a race; and

(E) The gross amount of tax collected from or charged to bettors as a separate item.

(2) If a taxpayer has any agents or employees receiving wagers on his behalf, he shall maintain a separate record showing the name and address of each agent or employee, the period of employment, and the number of the special tax stamp issued to each such agent or employee.

(3) A duplicate copy of each return required by section 325.30 shall be retained as part of the taxpayer's records.

(b) *Period for retaining records.* The records required by this section shall, at all

times, be open for inspection by internal revenue officers, and they shall be maintained for a period of at least four years from the date the tax became due.

SEC. 325.40. EFFECTIVE DATE OF TAX. The special tax imposed by section 3290 of the Internal Revenue Code is effective on and after November 1, 1951.

SEC. 325.41. PERSONS LIABLE FOR TAX. Every person who is liable for the 10 percent excise tax imposed on wagers by section 3285 of the Internal Revenue Code and every person who is engaged in receiving wagers for or on behalf of any other person so liable is liable for the special tax.

Example (1). A is engaged in the business of accepting horse race bets. He employs ten persons to receive on his behalf wagers which are transmitted by telephone. He also employs a secretary and bookkeeper.

A and each of the ten persons who receive wagers by telephone are liable for the special tax. The secretary and bookkeeper are not liable unless they also receive wagers for A.

Example (2). B operates a numbers game. He has an arrangement with ten persons, who are employed in various capacities, such as bootblacks, elevator operators, news dealers, etc., to receive wagers from the public on his behalf. B also employs a person to collect from his agents the wagers received on his behalf.

B, his ten agents, and the employee who

collects the wagers received on his behalf are each liable for the special tax.

SEC. 325.42. RATE AND COMPUTATION OF TAX. (a) A tax of \$50 per year is imposed upon each person liable for the tax. A person engaged both in accepting wagers on his own account and in receiving wagers for or on behalf of some other person is required to purchase but one special tax stamp.

(b) The tax year begins July 1 and ends June 30. Persons commencing business between August 1 and June 30 (both dates inclusive) shall pay a proportionate part of the annual tax. "Commencing business" means the initial acceptance of a wager by a person liable for the 10 percent excise tax or the initial receiving of a wager by an agent or employee for or on behalf of some other person. Persons in business for only a portion of a month are liable for tax for the full month, i. e., a person first becoming subject to the special tax on, for example, the 20th day of a month, is liable for tax for the entire month. As the tax became effective on November 1, 1951, persons in business on that date or commencing business during that month are liable for the tax for the eight months of the year ending the following June 30.

SEC. 325.50. REGISTRY, RETURN, AND PAYMENT OF TAX. (a) Every person engaging in the business of accepting wagers and liable to the 10 percent excise tax imposed by section 3285 of the Internal Revenue

Code (see section 325.24 of these regulations) and every person engaged in receiving wagers for or on behalf of any person so liable shall on or before the last day of the month in which business is commenced file a return on Form 11-C. The return shall be filed with the collector of internal revenue for the district in which is located the taxpayer's office or principal place of business. If such taxpayer resides in the United States, but has no office or principal place of business in the United States, the return shall be filed with the collector of internal revenue for the district in which he resides. If the taxpayer has no office, residence, or principal place of business in the United States, the return shall be filed with the Collector of Internal Revenue, Baltimore, Md. The collector, upon request, will furnish to the taxpayer the proper forms which shall be filled out and signed as indicated therein.

(b) Every person engaged on November 1, 1951, in any business which makes him subject to the special tax, or first engaging in such business during the month of November 1951, shall register and file a return on Form 11-C and pay the tax on or before November 30, 1951. Thereafter, such person shall register, file a return, and pay the tax on or before the last day of July of each year.

(c) Each return shall show the taxpayer's full name. A person doing business under an alias, style, or trade name

shall give his true name, followed by his alias, style, or trade name. In the case of a partnership, association, firm, or company, other than a corporation, the style or trade name shall be given, also the true name of each member and his place of residence. In the case of a corporation, the true name and title of each officer and his place of residence shall be shown.

(d) Each person engaged in the business of accepting wagers on his own account shall furnish the name and address of each place where such business is conducted, together with the true name and residence address of each agent or employee accepting wagers on his behalf. Each agent or employee of a person accepting wagers shall furnish the name and residence address of each person (i. e., individual, partnership, corporation, etc.) on whose behalf such wagers are accepted.

SEC. 325.51. RECORDS OF AGENT OR EMPLOYEE. Every person who is engaged in receiving wagers of a type described in section 325.21 for or on behalf of another person (at any place other than a registered place of business of such other person), shall keep a record showing for each day (1) the gross amount of such wagers received by him, (2) the amount, if any, retained as a commission or as compensation for receiving such wagers, and (3) the amount turned over to the person on whose behalf the wagers were received, and the name and address of such person. The

records required by this section shall, at all times, be open for inspection by internal revenue officers, and they shall be maintained for a period of at least four years from the date the wager was received.

SEC. 325.52. TAX PAYMENT EVIDENCED BY SPECIAL TAX STAMP. (a) Upon receipt of a return, on Form 11-C, together with remittance of the full amount of tax due, the collector will issue a special tax stamp as evidence of payment of the special tax. Such payment shall be made only in the form of cash, certified check, cashier's check, or money order.

(b) Collectors will distinctly write or print on the stamp before it is delivered or mailed to the taxpayer the following information: (1) the taxpayer's registered name, and (2) the business or office address of the taxpayer if he has one; if not, the residence address. Special tax stamps will be transmitted by ordinary mail, unless it is requested that they be transmitted by registered mail, in which case additional cost to cover registry fee shall be remitted with the return.

(c) Collectors and their deputies are forbidden to issue receipts in lieu of stamps representing the payment of special taxes.

SEC. 325.53. SPECIAL TAX STAMP TO BE POSTED. The special tax stamp issued to a taxpayer as evidence of the payment of the tax shall be kept posted conspicuously in his principal place of business, except that if he has no such place of business he

shall keep such stamp on his person and exhibit it, upon request, to any officer or employee of the Bureau of Internal Revenue. Any person who, through negligence, fails to post the special tax stamp in his principal place of business, or who fails to keep the special tax stamp on his person in the event he has no business address, shall be liable to a penalty of \$50 and the cost of prosecution. If through willful neglect or refusal, any person fails to comply with the provisions of section 3293, he shall be liable to a penalty of \$100 and the cost of prosecution.

SEC. 325.54. CERTIFICATES IN LIEU OF STAMPS LOST OR DESTROYED. When a special tax stamp has been lost or destroyed, such fact shall be reported to the collector at once for the purpose of obtaining from him a certificate of payment. Such certificate shall be posted in place of the stamp; otherwise liability as above indicated for failure to post the stamp will be incurred. (See section 325.53.)

SEC. 325.60. DOING BUSINESS IN VIOLATION OF FEDERAL OR STATE LAW. Payment of any special tax within the scope of these regulations in nowise authorizes the carrying on of any business in violation of a law of the United States or the law of any State. The special tax stamp is not a license or permit and affords no protection from prosecution for violation of any Federal or State law.

SEC. 325.61. PUBLIC RECORD OF SPECIAL TAXPAYERS. The list required by the above section shall be kept on Record 10, and may be inspected in the collector's office at reasonable and proper times.